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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS-2011-0009]

RIN 0579-AE76

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments;

Withdrawal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is withdrawing a final rule that was filed for public inspection by the Office of the Federal Register on January 19, 2017, in advance of publication, amending the Agency's Horse Protection Act regulations (the 2017 HPA final rule). On January 23, 2017, APHIS withdrew the 2017 HPA final rule from publication without undertaking notice and comment procedures, in accordance with a memorandum that was issued by the Executive Office of the President on January 20, 2017. However, following a lawsuit, the U.S. Court of Appeals for the District of Columbia Circuit found this withdrawal to be deficient. The District Court subsequently ordered that USDA could remedy this deficiency by undertaking notice and comment procedures on the proposed withdrawal. APHIS therefore issued a notice of proposed rulemaking to withdraw the 2017 HPA final rule, and we are finalizing that withdrawal based on the comments received.

DATES: This withdrawal is effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Aaron Rhyner, DVM, Assistant Director, USDA-APHIS-Animal Care, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526-8117; aaron.a.rhyner@usda.gov; (970) 494-7484.

SUPPLEMENTARY INFORMATION:

Under the Horse Protection Act (HPA, or the Act, 15 U.S.C. 1821 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations to prohibit the movement, showing, exhibition, or sale of sore horses.

The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.<sup>1</sup>

On July 26, 2016, APHIS published in the *Federal Register* (81 FR 49112-49137, Docket No. APHIS-2011-0009) a proposal<sup>2</sup> to amend the regulations. Primarily, APHIS proposed to discontinue third-party training and oversight of Designated Qualified Persons, or DQPs, who inspect regulated horses for evidence of soring. Instead, we proposed all inspectors would have to be trained and licensed by APHIS. The rule also proposed several changes to the requirements that pertain to the management of horse shows, exhibitions, sales, and auctions, as well as changes to the list of devices, equipment, substances, and practices that are prohibited to prevent the soring of horses. Finally, we proposed to revise the inspection procedures that inspectors are required to perform.

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<sup>1</sup> To view the regulations, go to <https://www.ecfr.gov/current/title-9/chapter-I/subchapter-A/part-11>.

<sup>2</sup> To view the 2016 proposed rule, its supporting documents, and the comments that we received, go to <https://www.regulations.gov/docket/APHIS-2011-0009>.

We solicited public comments on the proposal and received 130,975 submissions, as well as comments provided at 5 listening sessions. After APHIS reviewed the comments, on January 11, 2017, we submitted a final rule to the Office of the Federal Register (OFR) for publication (the 2017 HPA final rule). That rule was filed for public inspection, in advance of publication, on January 19, 2017. However, on January 20, 2017, the Executive Office of the President issued a memorandum instructing Federal agencies to immediately withdraw all regulations awaiting publication at the OFR.<sup>3</sup> In response to the memorandum, the 2017 HPA final rule, which was filed for public inspection (and available on the *Federal Register* website, [www.federalregister.gov](http://www.federalregister.gov)), was withdrawn from publication by USDA on January 23, 2017, the first business day following January 20, 2017.

In August 2019, the Humane Society of the United States (HSUS) and other non-governmental organizations sued USDA. HSUS argued that the 2017 HPA final rule had been duly promulgated and could not be withdrawn without first providing public notice in the *Federal Register* and an opportunity for public comment. On July 22, 2022, the Court of Appeals for the D.C. Circuit held that “an agency must provide notice and an opportunity for comment when withdrawing a rule that has been filed for public inspection but not yet published in the Federal Register.” *Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, 41 F.4th 564, 565 (D.C. Cir. 2022). In remanding the case to the lower court, the Court of Appeals clarified that “[o]n remand, the district court may consider all remedial issues, including the question of whether remand to the agency without vacatur is appropriate under the criteria established by Circuit precedent.” *Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, 54 F.4th 733, 734 (D.C. Cir. 2022).

On May 12, 2023, the District Court issued its decision on remand. *Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, No. 19-cv-2458 BAH, 2023 WL 3433970 (D.D.C. May 12, 2023).

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<sup>3</sup> To view the memorandum, go to <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-heads-executive-departments-agencies/>.

The Court remanded the withdrawal of the 2017 HPA final rule to APHIS without vacatur, but ordered that the withdrawal of the 2017 HPA final rule would be vacated in 120 days if the agency failed to take appropriate remedial action before then. The Court indicated that USDA could attempt to promulgate a new HPA rule or “remedy the deficiency in the withdrawal of [the 2017 HPA final rule] by conducting notice and comment on the withdrawal.” 2023 WL 3433970, at \*14. On May 23, 2023, APHIS requested that the Court extend the deadline for action from 120 days to 180 days and the court granted that request on June 1, 2023.

On July 21, 2023, we published a notice of proposed rulemaking for the proposed withdrawal<sup>4</sup> of the 2017 HPA final rule (“notice of proposed rulemaking”) in the *Federal Register* (88 FR 47068-47071, Docket No. APHIS-2011-0009). In that notice of proposed rulemaking, we cited several bases for the proposal to withdraw the 2017 HPA final rule. First, the National Academy of Sciences (NAS) reviewed methods for detecting soreness in horses and published a report of their findings in 2021, and we determined that the 2017 HPA final rule did not sufficiently address the report’s findings. Second, a significant period of time had elapsed since the 2017 HPA final rule was issued, and the underlying data and analyses that supported the rule likely needed to be updated. Third, it was our intent to issue a new proposed rule (“new proposed HPA regulations”) that would incorporate more recent findings and recommendations, including the NAS report, and the new proposed HPA regulations were then under review by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Finally, withdrawing the 2017 HPA final rule would avoid regulatory whiplash by having the final rule go into effect only to have it subject to change, within a relatively short period of time, by another rulemaking.

We solicited comments concerning our notice of proposed rulemaking for 30 days, ending August 21, 2023.

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<sup>4</sup> To view the notice of proposed rulemaking on the proposed withdrawal, its supporting documentation, and the comments that we received, go to <https://www.regulations.gov/docket/APHIS-2011-0009>.

We received 22,971 unique submissions comprising 114,994 comments by the close of the comment period. They were from non-governmental organizations; national organizations representing veterinarians, equine practitioners, and equestrian interests; a State farm bureau; former and current judges of walking horse shows; former walking horse inspectors; and private citizens.

Below, we discuss the comments that we received, by topic.

### **Comments Suggesting We Implement The 2017 HPA Final Rule Rather Than Pursue New Proposed HPA Regulations**

We received a number of comments that suggested we implement the 2017 HPA final rule rather than withdraw that rule and proceed with new proposed HPA regulations.

Many commenters stated that the HPA final rule included protections to preclude sore horses from being shown or exhibited that do not exist in the current regulations, and therefore should be implemented. For example, several commenters pointed out that the 2017 HPA final rule had restrictions and prohibitions specific to the Tennessee Walking and Racking Horse (TWH) industry that are not found in the current regulations.

We agree that the 2017 HPA final rule is preferable to the current regulations, but consider the new proposed HPA regulations to be preferable to the 2017 HPA final rule for reasons discussed in the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule and in this document. Additionally, allowing the 2017 HPA final rule to go into effect would have a significant adverse effect on the new proposed HPA regulations that we wish to avoid; we discuss this at greater length later in this document.

A number of commenters stated that it would be easier and quicker for the Agency to allow the 2017 HPA final rule to go into effect than to proceed with new proposed HPA regulations.

Even if allowing the 2017 HPA final rule to go into effect were easier and quicker, we consider the new proposed HPA regulations to be preferable to the 2017 HPA final rule for

reasons discussed in the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule and this document.

A commenter stated that the 2017 HPA final rule should not be withdrawn because it prohibited the use of chemicals and devices associated with soring.

Section 11.2 of the current regulations already prohibits the use of chemicals associated with soring, as well as the devices mentioned by the commenter.

Finally, a commenter stated that the 2017 HPA final rule should not be withdrawn because, in its absence, there would be none of the current protections in place against allowing sore horses to be shown or exhibited.

The commenter appears to mistakenly believe that we proposed withdrawal of the HPA regulations in their entirety, rather than withdrawal of the 2017 HPA final rule that revised the existing HPA regulations. Because the existing HPA regulations are not affected by the withdrawal, the current protections will remain in place, and this is not a reason to refrain from withdrawing the 2017 HPA final rule.

### **Comments Suggesting We Implement The 2017 HPA Final Rule While the Rulemaking Process for New Proposed HPA Regulations Are Underway**

As noted above, one of our stated reasons for proposing to withdraw the 2017 HPA final rule was to avoid regulatory whiplash associated with implementing that rule, only to have it subject to change, within a relatively short period of time, by another rulemaking.

Several commenters disagreed with this position.

One commenter stated that issuing new proposed HPA regulations does not preclude the agency from subsequently implementing the 2017 HPA final rule after the new proposed HPA regulations are published and proceed through the rulemaking process.

While the publication of new proposed HPA regulations<sup>5</sup> on August 21, 2023 (88 FR 56924-56962, Docket No. APHIS-2022-0004) does not necessarily preclude APHIS from implementing the 2017 HPA final rule, as we stated in the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule and further elaborate on in this document, we would prefer not to implement a rule that is based on outdated data. Moreover, implementing the 2017 HPA final rule would substantially adversely impact the new proposed HPA regulations. The new proposed HPA regulations were drafted as a complete revision of the existing HPA regulations, meaning that, the new proposed HPA regulations do not propose to amend the regulations as set forth in the 2017 HPA final rule but instead propose to amend the regulations that were in place before the 2017 HPA final rule. Thus, allowing the 2017 HPA final rule to become the current HPA regulations would fundamentally and unnecessarily shift the regulatory scheme on which the new proposed HPA regulations are predicated. As one commenter opined, APHIS would thus have to withdraw, substantially revise, and repropose the new proposed HPA regulations were the 2017 HPA final rule implemented. We agree that either withdrawal or a new regulatory action, such as a supplemental proposal, would be warranted. Specifically, we would have to revise the amendatory instructions and regulatory text of the new proposed HPA regulations—which do not refer to the 2017 HPA final rule or otherwise take that rule and its changes to the pre-existing regulatory landscape into account—to comport with the structure of the regulations in the 2017 HPA final rule, and allow for public comment on this revised regulatory text. This additional regulatory action would significantly extend the timelines for any possible finalization of the new proposed HPA regulations, and any withdrawal or substantive modification to the new proposed HPA regulations heightens the likelihood of confusion regarding the Agency’s intent. This likelihood of confusion is underscored by the comments on the notice of proposed rulemaking regarding the withdrawal itself, many of which

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<sup>5</sup> To view the proposed rule, supporting documentation, and the comments that we have received, go to <https://www.regulations.gov/docket/APHIS-2022-0004>.

interpreted the proposed withdrawal of the 2017 HPA final rule as indicating an intent not to issue new HPA regulations despite the stated intent in the notice of proposed rulemaking to do so.

One commenter stated that regulatory whiplash would not occur because it would take a significant amount of time to finalize the new proposed HPA regulations. Another commenter stated that regulatory whiplash would not occur because the horse industry could easily adjust to regulatory changes.

As noted above, implementing the 2017 final rule would substantially adversely impact the new proposed HPA regulations, and trigger the need for regulatory actions to withdraw or modify it. For this reason, we disagree with the commenters that regulatory whiplash will not occur if the new proposed HPA regulations takes significantly longer than anticipated to finalize. Rather, it is the Agency's position that any such withdrawal or modification to the new proposed HPA regulations is likely to result in confusion regarding the Agency's intent, and thus actual or perceived regulatory whiplash.

We also disagree that the 2017 HPA final rule could quickly be implemented. We note that most of the sections in the 2017 HPA final rule would have had an effective date of January 1, 2018, that is, about 1 year after the date it was placed on public inspection. This was done out of recognition that there were aspects of the rule that were dependent on other aspects, such as the need to implement a process for Agency training of new third-party inspectors before the inspectors could be appointed to shows and exhibitions, and the rule therefore could not be immediately implemented. We also note that the final rule indicated that one of the provisions of the final rule, a prohibition on the use of pads by Tennessee Walking Horses (TWHs) "would be harmful to some horses currently on high pads...without a phasing-in period," and indicated that the January 1, 2018 effective date was chosen in part to ensure this phasing-in period could occur.



Finally, several commenters stated that we could implement the 2017 HPA final rule, and then issue new proposed HPA regulations proposing any additional revisions to the regulations that were necessary.

This was an option before the Agency; however, as noted in the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule, we had reservations about implementing a rule that relied on underlying data and analyses that were at least 7 years old. Indeed, as several commenters noted, the preponderance of data in support of the 2017 HPA final rule was from 2011 or prior, and not necessarily indicative of current industry practices. One of these commenters also noted that the age of the data could present a possible legal vulnerability in the event of litigation by the industry. Accordingly, we preferred to withdraw the 2017 HPA final rule in favor of new proposed HPA regulations that would completely revise the existing HPA regulations and would be based on the most up-to-date data, including that in the NAS report.

### **Comments Regarding Issuance of the New Proposed HPA Regulations**

Many commenters urged us to finalize the new proposed HPA regulations referenced in the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule as expeditiously as possible, and that the proposed withdrawal of the 2017 HPA final rule should not be finalized until the new proposed HPA regulations are issued. Several commenters stated that the 2016 proposed rule on which the 2017 HPA final rule was based should be reissued until new proposed HPA regulations are issued, while others stated that, if new proposed HPA regulations could not be issued expeditiously, the 2017 HPA final rule should go into effect instead. A number of commenters stated that APHIS was not intent on issuing new HPA regulations, with some citing the length of time they had been under OMB review as purported evidence of this. Finally, many commenters pointed out that APHIS did not provide a timeline for issuance of new HPA regulations.

These comments have all been overtaken by the fact that the new proposed HPA regulations have been published. As we noted above, the new proposed HPA regulations were published in the *Federal Register* on August 21, 2023.

### **Comments Regarding Finalization of the New Proposed HPA Regulations**

Several commenters stated that the 2017 HPA final rule should not be withdrawn until the new proposed HPA regulations are finalized.

As noted previously in this document, the District Court afforded APHIS 180 days, or until November 8, 2023, to remedy the deficiency in its previous withdrawal of the 2017 HPA final rule. APHIS has remedied that deficiency by providing notice and opportunity for public comment on the proposed withdrawal and, based on the comments received, making this determination to withdraw the 2017 HPA final rule. Whereas the deadline to undertake this rulemaking process is November 8, 2023, the comment period for the new proposed HPA regulations ended on October 20, 2023. It is not possible to fulfill the legal and procedural requirements associated with issuance of a final regulatory action regarding the new proposed HPA regulations—which include reviewing and responding to all issues raised by commenters, as well as revising supplemental documentation, as warranted, and clearing the final action and documentation through the appropriate offices—in the 19 days between October 20, 2023, and November 8, 2023.

A commenter stated that the withdrawal of the 2017 HPA final rule should only be finalized before the new proposed HPA regulations are finalized if legally or procedurally necessary.

As noted above, it will be legally necessary to publish a final determination on the proposed withdrawal of the 2017 HPA final rule before we can take any subsequent regulatory action regarding the comments on the new proposed HPA regulations.

A number of commenters urged us to finalize and implement a final rule resulting from the new proposed HPA regulations as expeditiously as possible. Several of the commenters

stated that, if this were not to occur, the withdrawal of the 2017 HPA final rule would possibly be in violation of the Administrative Procedure Act (APA). Specifically, they stated that the withdrawal could be found unlawful pursuant to 5 U.S.C. 706(2)(A). (This section of the APA provides that a reviewing court shall hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.) In their estimation, APHIS provided no evidence that the 2017 HPA final rule was without foundation or otherwise inadequate, and thus the basis for the withdrawal was predicated solely on the issuance, finalization, and implementation of the new proposed HPA regulations.

We note that the commenters urged us to finalize the new proposed HPA regulations irrespective of the comments received on the proposed rule; the APA precludes us from doing so.

Additionally, we disagree with the commenters that the proposed withdrawal did not articulate concerns with the foundation for the 2017 HPA final rule; as noted above, we stated that the underlying data and analyses in support of the final rule were outdated and without the benefit of the recent NAS report's findings or recent inspection data. We further noted that allocating resources towards implementing outdated regulations would hamper APHIS' efforts to modernize the horse protection regulations. We also agree with a commenter who stated that the age of the data could present a possible legal vulnerability in the event of litigation by the industry.

Finally, while it is APHIS' intent to act as promptly as possible regarding the new proposed HPA regulations, we note that there are legal and procedural requirements that we must follow regarding any regulatory action. This includes, but is not limited to, the need for fulsome review of the comments received to fulfill the requirements of the APA; the need to review, and, as necessary, revise supporting documentation in response to comments; and the need to comply with Executive Orders governing the regulatory process. We also note that we have never claimed that a complete revision to the existing HPA regulations could be immediately

implemented; as noted above, the 2017 HPA final rule afforded nearly a year between when it was placed on public inspection and when it would have been effective.

### **Comments Regarding the 2017 HPA Final Rule's Consistency with the NAS Report**

As noted above, one of our stated reasons for proposing to withdraw the 2017 HPA final rule was that we had reviewed the 2017 HPA final rule in light of the NAS report, and determined that the rule did not sufficiently address the report's findings.

One commenter disagreed and stated that, having watched discussions regarding the drafting of the report and having reviewed the report, the commenter was certain it was entirely consistent with the provisions of the 2017 HPA final rule. Other commenters stated that the report recommended revising the "scar rule," which the 2017 HPA final rule did not propose to do, and that new proposed HPA regulations would indeed be needed to incorporate all of the report's recommendations.

We agree with the latter commenters; the former commenter is in error about the report's consistency with the 2017 HPA final rule for the reasons the latter commenters articulated.

### **Comments Requesting That the New Proposed HPA Regulations Retain Certain Provisions of the 2017 HPA Final Rule**

A number of commenters cited provisions of the 2017 HPA final rule that, they stated, should be retained in the new proposed HPA regulations if APHIS were to withdraw the 2017 HPA final rule.

Several commenters stated the new proposed HPA regulations should also propose to relieve horse industry organizations, or HIOs, of all regulatory responsibilities for approving and training third-party inspectors.

The new proposed HPA regulations propose to relieve HIOs of such responsibilities.

A commenter stated that the new proposed HPA regulations should also contain clear criteria for being a third-party inspector, as well as a process for denying an application to be an inspector.

The new proposed HPA regulations do contain such criteria and such a process.

A commenter stated that the new proposed HPA regulations should also propose to limit third-party inspectors to veterinarians and other individuals with knowledge of the equine industry who had been screened for possible conflicts of interests.

The new proposed HPA regulations do so.

A commenter stated that the new proposed HPA regulations should also propose to require horse show management to pay for inspectors.

The new proposed HPA regulations do so, provided that management elects to use third-party inspectors. The proposed HPA regulations do propose to allow inspection directly by APHIS representatives, free of charge.

Several commenters stated that the new proposed HPA regulations should also include additional requirements specific to the TWH industry, which, the commenters stated, has a long history of documented instances of soring and violations of the regulations.

The new proposed HPA regulations proposes additional requirements specific to that industry.

A commenter stated that the new proposed HPA regulations should also prohibit any device, method, practice, or substance that could mask evidence of soring.

The new proposed HPA regulations propose such a prohibition.

A commenter stated that the new proposed HPA regulations should contain the reporting requirements specific to the TWH industry that were contained in the 2017 HPA final rule.

They contain such reporting requirements.

Finally, a number of commenters stated that the new proposed HPA regulations should retain all key elements of the 2017 HPA final rule, without further elaborating regarding which elements they considered “key”.

We believe that they do, inasmuch as they further the same purposes under the HPA.

## **Comments Seeking to Ensure That the New Proposed HPA Regulations Include Provisions that the Proposed Withdrawal Represented Would Be Included in the New Proposed HPA Regulations**

Several commenters noted that the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule stated that the new proposed HPA regulations would take into consideration the findings of the NAS report, and asked for assurances that it did in fact do so.

The new proposed HPA regulations do take the NAS report's findings into consideration.

A number of commenters noted that the NAS report recommended revisions to the "scar rule," and requested that the new proposed HPA regulations propose to revise the scar rule consistent with the report's recommendations.

The new proposed HPA regulations do so.

Finally, one commenter interpreted the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule to suggest that the new proposed HPA regulations would allow for inspection directly by an APHIS representative at no cost to show management, rather than inspection by a third-party inspector. The commenter supported this proposed provision and requested that it in fact be included in the new proposed HPA regulations.

The new proposed HPA regulations contain such a provision.

## **Comments Requesting Additional Provisions in the New Proposed HPA Regulations**

We also received a number of requests for additional provisions that were not included in the 2017 HPA final rule, and that we did not suggest in the proposed withdrawal would be part of the new proposed HPA regulations.

Several commenters suggested that the new proposed HPA regulations should prohibit the use of weighted shoes. Other commenters stated that prohibitions on the use of shoes, pads, wedges, and action devices that were specific to the TWH industry in the 2017 HPA final rule

should also be extended to the Spotted Saddle Horse industry in the new proposed HPA regulations. One commenter suggested that the new HPA regulations should require all inspectors to be trained in evidence of pain and anxiety in horses, and should include random and targeted swabbing for use of prohibited chemicals.

We consider these comments to be outside of the scope of the proposed withdrawal.

With that being said, under current operational practice, APHIS does train inspectors in noticing evidence of pain and anxiety in horses, and random and risk-based swabbing for use of prohibited chemicals does occur.

### **Miscellaneous**

One commenter stated that soring is an inhumane practice, while another, who owned racking horses, said that they did not need to be sored in order to produce an elegant gait.

This comment is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule. As we noted in the new proposed HPA regulations, Congress has declared that the soring of horses is cruel and inhumane. 15 U.S.C. 1822.

A commenter stated that American Quarter Horse Association horses, Arab horses, American saddlebred horses, and Morgan horses are also sored prior to competitions.

This comment is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule. We note, however, that in the new proposed HPA regulations, we invited public comment on any observations persons may have regarding soring in breeds other than in the TWH industry.

Several commenters suggested that APHIS should ban all soring of horses, while other commenters stated that this would be outside the scope of the HPA, and either new legislation or a revision to the HPA would be required in order for APHIS to prohibit such practices unilaterally.

The latter commenters are correct; the HPA does not prohibit the practice of soring outright but, rather, requires the disqualification of sore horses from being shown or exhibited,

and prohibits them from being shown or exhibited in any horse show or exhibition; and from being sold, auctioned, or offered for sale in any horse sale or auction.

A commenter stated that the Prevent All Soring Tactics Act of 2022 should be issued, while another stated that horse slaughter should be outlawed.

The issuance of legislation is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule.

A commenter stated that APHIS' Wildlife Services and Animal Care programs should be abolished, while another stated that the latter program should receive additional funding for HPA enforcement.

Both comments are outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule.

A commenter stated that Animal Care should use thermography to detect signs of inflammation in horses.

This is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule. However, we note that Animal Care uses thermography currently and plans to continue this use.

A commenter stated that Animal Care should collect blood samples to test for use of prohibited medications and medications administered beyond therapeutic levels.

This is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule.

A commenter stated that all APHIS regulations should be immediately withdrawn and rewritten in plain language, using Webster's dictionary definitions, and maintained on a single government site.

This is outside the scope of the notice of proposed rulemaking regarding the withdrawal of the 2017 HPA final rule.

Finally, a commenter noted that horses are beautiful animals.



We agree.

Therefore, for the reasons set forth in the proposed withdrawal of the 2017 HPA final rule and in this document, we are withdrawing the 2017 HPA final rule.

Executive Orders 12866, 13563, and 14094, and the Regulatory Flexibility Act

This proposed withdrawal has been determined to be significant for the purposes of Executive Order 12866, as amended by Executive Order 14094, and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rulemaking. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rulemaking on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below.

APHIS is withdrawing a final rule that was filed for public inspection, in advance of publication, by the Office of the Federal Register on January 19, 2017, amending the Agency's Horse Protection Act regulations (the 2017 HPA final rule). APHIS withdrew the 2017 HPA final rule from publication without undertaking notice and comment procedures on January 23, 2017, in accordance with a memorandum that was issued by the Executive Office of the President on January 20, 2017. However, following a lawsuit, the U.S. Court of Appeals for the District of Columbia Circuit found this withdrawal to be deficient. The U.S. District Court for the District of Columbia has indicated that one way to remedy this deficiency is to undertake notice and comment procedures on the proposed withdrawal. Based on the comments received, APHIS is withdrawing the 2017 HPA final rule.

This withdrawal is an administrative action and is intended to support the withdrawal of the 2017 HPA final rule, and this action will not have a significant impact on the affected entities. In the absence of apparent significant economic impacts, we have not identified alternatives that would minimize any impacts. In addition, APHIS is in the process of developing new HPA regulations that would provide protections to the regulated horses. Also, these new amendments to the Horse Protection regulations propose to incorporate the findings of a 2021 National Academy of Sciences (NAS) report that examined methods used to inspect horses for soreness. This NAS report was published after the 2017 HPA final rule was filed for public inspection.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 13175

This withdrawal has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We have determined that this action does not have tribal implications, insofar as it withdraws a final rule that the Agency never implemented or enforced.

#### Paperwork Reduction Act

This withdrawal contains no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Done in Washington, DC, this 23rd day of October 2023.

Jennifer Moffitt,

Undersecretary, Marketing and Regulatory Programs, USDA.

[FR Doc. 2023-23938 Filed: 10/30/2023 8:45 am; Publication Date: 10/31/2023]